

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KENNETH COLVIN, JR., # 192744,)	
)	
Petitioner,)	Case No. 4:01-cv-168
)	
v.)	Honorable Robert Holmes Bell
)	
BRUCE CURTIS,)	
)	
Respondent.)	
_____)	

ORDER OF TRANSFER TO THE COURT OF APPEALS

Presently pending before this court is petitioner's motion to reopen petition for writ of habeas corpus pursuant to Rule 60(b). (docket # 73). On June 5, 2006, Magistrate Judge Joseph G. Scoville entered a report and recommendation, finding that petitioner's motion must be treated as a second or successive petition under *Gonzalez v. Crosby*, 125 S. Ct. 2641 (2005). The magistrate judge therefore recommended that the motion be transferred to the Court of Appeals for the Sixth Circuit for its review under 28 U.S.C. § 2244. Petitioner has now filed a timely objection to the report and recommendation, which this court must review *de novo*.

The court has reviewed the report and recommendation and petitioner's objections. Despite petitioner's protestations to the contrary, petitioner is indeed attacking this court's previous judgment "on the merits." In his motion, petitioner asserts that this court's previous judgment was erroneous and failed to apply controlling Supreme Court precedents. As this court's previous judgment has now been affirmed by the Court of Appeals and is final, petitioner's challenge to the legal correctness of that judgment is clearly an attack on the merits under *Gonzalez*. 125 S. Ct. at

2647-48. The report and recommendation was clearly correct in concluding that petitioner's Rule 60(b) motion must be deemed a second or successive application for habeas corpus relief, which may only be brought with the permission of the Court of Appeals. Accordingly:

IT IS ORDERED that the report and recommendation of the magistrate judge (docket # 75) is hereby ADOPTED as the opinion of the court.

IT IS FURTHER ORDERED that petitioner's objection (docket # 76) be and hereby is OVERRULED.

IT IS FURTHER ORDERED that petitioner's Rule 60(b) motion (docket # 73) be and hereby is TRANSFERRED to the United States Court of Appeals for the Sixth Circuit in accordance with the procedure established by *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997).

Date: June 27, 2006

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE